

## Ellie A. Silverman, Esq.

September 14, 2018

**BY ECF**

Honorable Naomi Reice Buchwald  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Jarrett Frost v. City of New York, et al.,  
15 Civ. 4843 (S.D.N.Y.) (NRB)

Your Honor:

Please accept this letter as a letter of transparency in connection with the filing of the answering brief to Defendants' Motion for Summary Judgment. I am/was an associate of Novo Law Firm, PC where the sole principal has been suspended from the practice of law. As such, Mr. Frost currently and technically is not represented by his counsel. However, because I am the attorney of record and have full knowledge of the case, I believe that I have an ethical duty to the client to file his opposition timely, despite being heavily warned against it. Pursuant to Your Honor's most recent Order dated August 8, 2018, Plaintiff is to file his opposition papers by September 14, 2018. (Dkt. No. 87).

On September 13, 2018, it was necessary for me to file a letter-application notifying this Honorable Court of the interim suspension of the Novo Firm's sole principal, Ilya Novofastovsky, which was effective "immediately" as of August 30, 2018. In addition to the notification, it was also necessary for me to respectfully request that Your Honor adjourn the time for Plaintiff to submit his answering brief to Defendants' pending Motion for Summary Judgment for sixty (60) days. (Dkt. No. 88)

The Letter-Application and its late timing is solely the result of, and has been necessitated by, circumstances beyond my control –the immediate Interim Suspension of Mr. Novofastovsky, the sole principal of the Novo Firm and the hours of consulting with independent ethics counsel since September 4, 2018. As a result of the suspension, I have been tasked with immediately addressing the "wind up" and transition ministerial tasks for the 900+ cases in this firm (along with only 3 other associates). As such, it has been nearly impossible for me to do the required editing and adjustments to the answering brief as planned.

More importantly, I have not had the opportunity to speak to Mr. Frost inform him of: the facts and circumstances in connection with Mr. Novofastovsky's Interim Suspension; my

belief and understanding as to the extremely limited action I may take, as an associate of the Novo Firm, on his behalf; and as to the matter of retaining new counsel, how I can assist him and to discuss with him the filing of this opposition.

On September 13, 2018 after filing my Letter-Application, I contacted the Honorable Court Chambers to confirm receipt and to acknowledge that one of the footnotes was noted in error. I was advised that the letter-application would be presented to Your Honor some time yesterday for review. As of this evening, there has been no Order granting or dismissing my Letter- Application.

Therefore, in order to prevent the summary judgment motion against Mr. Frost being granted “on default” or being fully submitted “unopposed”, I am left with no other choice but to file this answering brief on his behalf with the caveat that it is being submitted without supervision, without the principal attorney that Mr. Frost retained, without me knowing if Mr. Frost authorizes me to file this answering brief and without Mr. Frost’s acknowledgment to me that he understands his rights at this time.

I must respectfully reserve the right to submit an addendum or supplemental memorandum of law, an addendum or supplemental exhibit, an addendum or supplemental response to Defendants’ Rule 56.1 statement and/or counter-statement of facts or any other part of the answering brief; to re-file an edited opposition; and remove this opposition and replace it altogether depending on the advice of ethics counsel, the directives of ethics counsel and/or following a conversation with Mr. Frost if different instructions are given by Mr. Frost contrary to what has been filed.<sup>1</sup>

Though I am extremely uncomfortable to file this answering brief, I would never want my actions or omissions in this case to be the reason that Mr. Frost’s case would or could be materially harmed. Therefore, it is my belief that filing this opposition would cause Mr. Frost less prejudice than not filing it and as such, in addition to the filing of this transparency letter will be the timely filing of my answering brief on behalf of Mr. Frost.

Respectfully submitted,



Ellie Silverman

CC: All counsel via ECF

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<sup>1</sup> It should also be noted that there have been technological issues with the server during the course of September 14, 2018 and it has been difficult getting on to the server and internet to obtain certain documents and the formatting has been difficult to adjust in certain documents. Plaintiff respectfully requests that this Honorable Court consider substance over form, in its review of this answering brief.